

## **REMARKS**

### **Claim Rejections**

Claims 4 and 6 are rejected under 35 U.S.C. § 102(b) as being anticipated by Lee (U.S. 6,354,193). Claim 5 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Lee in view of Hoffert (U.S. 3,331,308).

### **Drawings**

It is noted that no Patent Drawing Review (Form PTO-948) was received with the outstanding Office Action. Thus, Applicant must assume that the drawings are acceptable as filed.

### **New and Amended Claims**

By this Amendment, Applicant has amended claims 4-6 of this application. It is believed that the new and amended claims specifically set forth each element of Applicant's invention in full compliance with 35 U.S.C. § 112, and define subject matter that is patentably distinguishable over the cited prior art, taken individually or in combination.

The amended claims recite, *inter alia*, a hot dog frying pan structure having a frying pan having ***an elongated handle***, the frying pan having ***a bottom surface configured for removably contacting a separate heat source***.

Dependent claims further recite a hot dog frying pan structure having: a ***single*** crank ***configured to turn all of the plurality of rollers at once*** through the action of both the first gears and the plurality of second gears; or a ***single*** motor ***configured to turn all of the plurality of rollers at once*** through the action of both the first gears and the plurality of second gears.

It is not believed that the foregoing amendments require any further searching and/or consideration on the part of the Examiner, since such amendments merely make explicit limitations inherent to previously recited features, specifically taught by Applicant in the specification, that are inherent to a frying pan (e.g., elongated handle) or Applicant's disclosed turning mechanism (i.e., a single

crank of motor controls the rotation of both the first gears and the plurality of second gears).

Applicant recites a "pan", rather than a heater. The structure includes a frying pan 1, a metal rack 2, and a crank handle 3. The frying pan 1 has an elongated handle 10 at one side for holding by a user's hand. The rack 2 is mounted in the frying pan 1. One cylindrical roller 20 has a roller shaft 200 extended out of the rack 2. The crank handle 3 is fastened to the roller shaft 200 for turning by hand to rotate the respective cylindrical roller 20 and to further drive the other cylindrical roller 20 to rotate via the first gears 21 and the second gears 22. A DC motor 4 also can be built in the crank handle 3 (Please see the FIGS. 3 and 4). As a result, the DC motor 4 is coupled to the roller shaft 200 for turning the cylindrical roller 20 automatically. Applicant's structure thus offers the advantages of being light and the rack 2 is easily separated from the crank handle 3 and, also, from the frying pan 1. Therefore, Applicant's structure can be both held by a user and easily cleaned.

The first primary reference to Lee teaches a roaster oven including a roaster oven body, a roaster frame 3, and a transmitting device 4 combined together. The roaster frame 3 is located on the top surface of the frame case 30 (above the oven) in an opening 25 with heat tubes 21 below. It is important to note that the oven is not a frying pan, but is rather an oven. As such it does not have an elongated handle, nor does it have a bottom surface for removably contacting a heat source (stove burner or otherwise). In addition, the handles 301 noted by the Examiner appear to be little more than support tabs for holding the frame in the opening; in any event they do not teach an elongated, frying pan handle.

Lee does not teach a hot dog frying pan structure in the form of a frying pan having an elongated handle and a bottom surface configured for removably contacting a separate heat source. Lee also fails to teach: a hot dog frying pan structure having: a single crank configured to turn all of the plurality of rollers at once through the action of both the first gears and the plurality of second gears; or a single motor configured to turn all of the plurality of rollers at once through the action of both the first gears and the plurality of second gears.

It is axiomatic in U.S. patent law that, in order for a reference to anticipate a claimed structure, it must clearly disclose each and every feature of the claimed

structure. Applicant submits that it is abundantly clear, as discussed above, that Lee does not disclose each and every feature of Applicant's new claims and, therefore, could not possibly anticipate these claims under 35 U.S.C. § 102. Absent a specific showing of these features, Lee cannot be said to anticipate any of Applicant's new claims under 35 U.S.C. § 102.

Hoffert teaches a rotisserie having a pan 10 with frame piece 11 with rollers 19 which are individual and integrally combined with the rotisserie 4. They are not joined to a rack by gears. Each hand turning mechanism 21 only can turn one roller 19 at a time, so a user must turn each single hot dog individually. Furthermore, Hofferts' device cannot turn automatically. Also, the device is heavy, and lacks a handle to allow it to be hand held.

Hoffert does not teach a hot dog frying pan structure in the form of a frying pan having an elongated handle and a bottom surface configured for removably contacting a separate heat source. Hoffert also fails to teach: a hot dog frying pan structure having: a single crank configured to turn all of the plurality of rollers at once through the action of both the first gears and the plurality of second gears; or a single motor configured to turn all of the plurality of rollers at once through the action of both the first gears and the plurality of second gears.

Even if the teachings of Lee and Hoffert were combined, as suggested by the Examiner, the resultant combination does not suggest: a hot dog frying pan structure in the form of a frying pan having an elongated handle and a bottom surface configured for removably contacting a separate heat source.

The resultant combination also fails to suggest: a hot dog frying pan structure having: a single crank configured to turn all of the plurality of rollers at once through the action of both the first gears and the plurality of second gears; or a single motor configured to turn all of the plurality of rollers at once through the action of both the first gears and the plurality of second gears.

It is a basic principle of U.S. patent law that it is improper to arbitrarily pick and choose prior art patents and combine selected portions of the selected patents on the basis of Applicant's disclosure to create a hypothetical combination which allegedly renders a claim obvious, unless there is some direction in the selected prior art patents to combine the selected teachings in a manner so as to negate the

patentability of the claimed subject matter. This principle was enunciated over 40 years ago by the Court of Customs and Patent Appeals in In re Rothermel and Waddell, 125 USPQ 328 (CCPA 1960) wherein the court stated, at page 331:

The examiner and the board in rejecting the appealed claims did so by what appears to us to be a piecemeal reconstruction of the prior art patents in the light of appellants' disclosure. ... It is easy now to attribute to this prior art the knowledge which was first made available by appellants and then to assume that it would have been obvious to one having the ordinary skill in the art to make these suggested reconstructions. While such a reconstruction of the art may be an alluring way to rationalize a rejection of the claims, it is not the type of rejection which the statute authorizes.

The same conclusion was later reached by the Court of Appeals for the Federal Circuit in Orthopedic Equipment Company Inc. v. United States, 217 USPQ 193 (Fed.Cir. 1983). In that decision, the court stated, at page 199:

As has been previously explained, the available art shows each of the elements of the claims in suit. Armed with this information, would it then be non-obvious to this person of ordinary skill in the art to coordinate these elements in the same manner as the claims in suit? The difficulty which attaches to all honest attempts to answer this question can be attributed to the strong temptation to rely on hindsight while undertaking this evaluation. It is wrong to use the patent in suit as a guide through the maze of prior art references, combining the right references in the right way so as to achieve the result of the claims in suit. Monday morning quarterbacking is quite improper when resolving the question of non-obviousness in a court of law.

In In re Geiger, 2 USPQ2d, 1276 (Fed.Cir. 1987) the court stated, at page 1278:

We agree with appellant that the PTO has failed to establish a *prima facie* case of obviousness.

Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching suggestion or incentive supporting the combination.

Applicant submits that there is not the slightest suggestion in either Lee or Hoffert that their respective teachings may be combined as suggested by the Examiner. Case law is clear that, absent any such teaching or suggestion in the prior art, such a combination cannot be made under 35 U.S.C. § 103.

Neither Lee nor Hoffert disclose, or suggest a modification of their specifically disclosed structures that would lead one having ordinary skill in the art to arrive at Applicant's claimed structure. Applicant hereby respectfully submits that no combination of the cited prior art renders obvious Applicant's new and amended claims.

#### **Summary**

In view of the foregoing amendments and remarks, Applicant submits that this application is now in condition for allowance and such action is respectfully requested.

Should the Examiner not be of the opinion that this case is in condition for allowance, it is requested that this amendment be entered for the purposes of appeal, since it materially reduces the issues on appeal by obviating the outstanding rejections of claims 4-6 under 35 U.S.C. § 102(b) and § 103(a). It is not believed that the foregoing amendments require any further searching and/or consideration on the part of the Examiner, since such amendments merely recite limitations, taught by Applicant in the specification, that are inherent to Applicant's recited frying pan (e.g., elongated handle) or Applicant's disclosed and recited turning mechanism (i.e., a single crank or motor controls the rotation of both the first gears and the plurality of second gears).

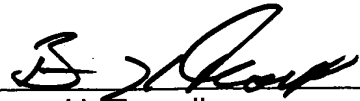
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Should any points remain in issue, which the Examiner feels could best be resolved by either a personal or a telephone interview, it is urged that Applicant's local attorney be contacted at the exchange listed below.

Respectfully submitted,

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